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HENG SIEW CHIANG SDN BHD

v.

DIRECTOR GENERAL FOR THE CONTROL OF PADI AND RICE & ANOR

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HIGH COURT SABAH & SARAWAK, TAWAU
ABDUL RAHMAN SEBLI JC
[CIVIL SUIT NO: T(21)15-2007]
20 OCTOBER 2009

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TRADE AND INDUSTRY: *Import and export - Search and seizure of rice - Whether such seizure unlawful - Warrant of search and seizure - Whether import licence required for transhipment of rice - Statutory provisions, whether must prevail over administrative sanctions - Liability for loss arising from seizure - Control of Padi and Rice Act 1994, s. 13(1), (4)*

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Two companies assigned their rights, interest, benefits and entitlement in 103,175 bags of rice ('subject rice') to the plaintiff. The 1st defendant obtained from a magistrate a warrant of search and seizure ('said warrant') of the subject rice pursuant to which the 1st defendant seized the subject rice. The plaintiff's claim, *inter alia*, was for a declaration that the subject rice cargo did not fall within the purview of the Control of Padi and Rice Act 1994 ('Act') with the consequential declaration that the defendants were not entitled to seize or sell the subject rice cargo, with all acts undertaken by the defendants, including those connected with the said warrant, being a nullity. The main issue requiring consideration was whether the 1st defendant's act of seizing the subject rice was unlawful and, if so, whether the plaintiff was entitled to damages. The plaintiff contended that since it was sanctioned by the Ministry of Finance ('MOF') and the Royal Malaysian Customs ('RMC') to carry out transhipment of the subject rice (which originated from Vietnam), the defendants had no right to seize the subject rice even though the plaintiff had no import licence to import the subject rice. The plaintiff also alleged that the 1st defendant had wrongfully or negligently applied for the said warrant.

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Held (dismissing the claim):

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(1) There was no basis for the plaintiff's allegation that the 1st defendant had wrongfully or negligently applied for the said warrant. Even without the said warrant, the 1st defendant was

empowered to seize the subject rice by virtue of s. 13(4) of the Act. In any event, the 1st defendant could not be held liable for executing a valid warrant of arrest regularly issued by the magistrate pursuant to s. 13(1) of the Act. There was also no requirement, as suggested by the plaintiff, for the magistrate to give the plaintiff the right to be heard before issuing the said warrant. The only requirements for right of seizure under s. 13(4) of the Act are those mentioned in the provision itself, and the right of hearing is not one of them. (paras 12, 13 & 14)

(2) So long as the 1st defendant had acted within the parameters of the Act (and not acted in bad faith), the defendants could not be faulted and be held liable for any loss arising from the seizure. The fact that the MOF and the RMC had given the plaintiff the green light to tranship rice did not exempt the plaintiff from complying with all the requirements under the Act. It is axiomatic that statutory provisions must prevail over administrative sanctions. Thus, whatever administrative sanctions that the plaintiff obtained from the MOF or the RMC could not override the provisions of the 1994 Act because it was the applicable law in matters relating to rice. The 1st defendant, and not any other government agency or authority (including the RMC), is the authority when it comes to rice. (paras 16 & 17)

(3) There is no provision in the Act or the regulations made thereunder which allows importation without licence for transhipment of rice. Therefore, the plaintiff's argument that no import licence was required for the purported transhipment of the subject rice was incorrect. In any event, there was no clear evidence that the subject rice was actually meant for transhipment to Indonesia and the Philippines. The undisputed evidence merely showed that the plaintiff had obtained permission from the MOF and the RMC to tranship rice. The bills of lading produced by the plaintiff were not conclusive proof that the subject rice was meant for transhipment. The transhipment issue seemed to be a red herring and a pretext to import rice without a licence. (para 21)

(4) For the above reasons, it was clear that the plaintiff had failed to prove on the balance of probability that the defendants were liable for the losses it suffered arising from the seizure and subsequent sale of the subject rice. The 1st defendant had acted within the confines of the law and had not acted in bad faith. (para 25)

Case(s) referred to:

APV Hill & Mills (M) Sdn Bhd v. AQ-Pacific Wide Sdn Bhd & Anor [2006] 1 CLJ 370 CA

Houlder Brothers & Co v. The Merchants Marine Insurance Company Limited [1886] 17 QBD 354

Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC

Legislation referred to:

Control of Padi and Rice Act 1994, ss. 13(1), (2), (4), 20

Control of Padi and Rice (Licensing of Importers and Exporters) Regulations 1994, reg. 3

Interpretation Acts 1948 and 1967, s. 66

For the plaintiff - Dr Lim Hock Leng (Erene Lee with him); M/s Lim Guan Sing & Co

For the defendants - Steve Ritikos SFC; AG's Chambers

Reported by Suresh Nathan

JUDGMENT

Abdul Rahman Sebli JC:

The Agreed Facts

[1] By a deed of assignment dated 10 November 2006, Can Tho Agricultural Foodstuff Export Company and Thot Not General Commerce Company assigned their rights, interest, benefits and entitlement in 103,175 bags of rice ("the subject rice") to the plaintiff. The 1st defendant through its department, the Bahagian Kawalselia Padi dan Beras on 17 April 2006 obtained from the Tawau magistrate a warrant of search and seizure of the subject rice pursuant to which the subject rice was seized by the 1st defendant. On 20 April 2006 the defendants took possession of the subject rice.

The Claim

[2] The plaintiff's claim, *inter alia*, is for the following relief:

> Declaration that the Subject Rice Cargo does not fall within the purview of the Control Act with the Consequential Declaration that the Defendants were not entitled to seize or sell the Subject Rice Cargo with all acts undertaken by the Defendants including that connected with the said Warrant being a nullity.

The Issues

[3] The plaintiff has submitted eight issues to be tried and the learned SFC appears to have agreed to them. The issues are the following:

1. Whether the subject rice was for transshipment at Tawau from Vietnam to the Philippines and Indonesia.
2. Whether the subject rice falls within the regulatory purview of the Control of Padi and Rice Act 1994 ("the 1994 Act").
3. In obtaining the *ex parte* warrant of search and seizure of the subject rice on 17 April 2006, did the defendants obtain the said warrant wrongfully and/or negligently?
4. In obtaining possession of the subject rice on 20 April 2006, did the defendants act wrongfully or contravened the subject rice?
5. In any event, whether the defendants acted unreasonably in its possession and control over the subject rice by failing:
   (a) To fumigate the subject rice; and/or
   (b) To properly consider the plaintiff's requests for the release or interim disposal of the subject rice *vide* letters dated 17 May 2006, 18 May 2006, 14 June 2006, 22 June 2006, 6 July 2006 and 17 July 2006.
6. Whether the defendants had acted *ultra vires* the Control of Padi and Rice Act 1994.
7. Whether the defendants are liable for trespass to conversion of the subject rice.
8. Whether the defendants had acted wrongfully in the sale of the subject rice at an undervalue whilst preventing and/or obstructing the fulfillment of obligations to foreign buyers of the subject rice for which the defendants are liable for damages including but not limited to the loss of profits.

[4] In my view the above eight issues can be dealt with together under one single issue and that is, whether the 1st defendant's act of seizing the subject rice was unlawful and if so whether the plaintiff is entitled to damages. In this regard it must be stated at the outset that the court is not concerned with whether the plaintiff

had committed an offence under the 1994 Act. The court's only concern is whether the 1st defendant had reasonable cause to suspect that the plaintiff had committed an offence under the 1994 Act.

[5] There is no dispute that the subject rice originated from Vietnam. The plaintiff's contention is that since it was sanctioned by the Ministry of Finance (the MOF) and the Royal Malaysian Customs (the RMC) to carry out transshipment of the subject rice the defendants had no right to seize them even though it had no import licence to import the subject rice. The defendants do not dispute the fact that the plaintiff was authorized by the MOF and the RMC to carry out transshipment activity but contended that as the plaintiff was importing the subject rice it must be in possession of a licence issued by the 1st defendant pursuant to reg. 3 of the Control of Padi and Rice (Licensing of Importers and Exporters) Regulations 1994 ("reg. 3"). Regulation 3 provides as follows:

> 3. No person shall import rice unless he is licensed to do so by the Director General.

[6] The recital to the 1994 Act is relevant and it states the purpose of the Act as being:

> to make provision in the law relating to padi and rice and for other matters connected therewith.

[7] It was contended by the learned SFC that the plaintiff's act was not mere transshipment but importation. He referred to the following definitions of "transshipment":

1. "Transfer (cargo) from one ship or other form of transport to another" (*Concise Oxford English Dictionary*, 11th edn.).

2. "Where goods are shipped in one vessel, then unloaded from her and reloaded on to another vessel" (*Mozley and Whiteley's Law Dictionary*, 11th edn.)

[8] Reference was also made to *Houlder Brothers & Co v. The Merchants Marine Insurance Company Limited* [1886] 17 QBD 354 where transshipment was taken to mean goods that are transferred from ship to ship although there may be a break in the journey in the interim. This case was cited with approval in *APV Hill & Mills (M) Sdn Bhd v. AQ-Pacific Wide Sdn Bhd & Anor* [2006] 1 CLJ 370.

[9] The plaintiff argued that the defendants had acted *ultra vires* the 1994 Act because the subject rice does not fall under the purview of the 1994 Act. What then amounts to an *ultra vires* act? The Federal Court in *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265 at p. 291 explained its meaning in the following terms:

> An act is *ultra vires* either because the authority has acted in excess of its power in the narrow sense, or because it has abused its power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regards to relevant considerations or with gross unreasonableness – see the principle stated by Lord Greene MR in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1947] 2 All ER 680, 685. Power is exercised in bad faith where its repository is motivated by personal animosity towards those who are directly affected by its exercise. Power is abused even when it is exercised in good faith, but for an unauthorized purpose or on irrelevant grounds, etc. as stated by Lord Macnaghten in *Wesminster Corporation v. London and North Western Railway* [1905] AC 426, 430:
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> > ... It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably.

[10] Applying the above principle to the facts of the present case the question is this: did the 1st defendant abuse its power when it seized the subject rice? To begin with there is no dispute that the search was carried out pursuant to a warrant issued by the Tawau magistrates court. It is not the plaintiff's case that the warrant was wrongfully or illegally issued by the magistrate. What the plaintiff is contending is that the warrant was obtained by the 1st defendant wrongfully or negligently. The material parts of the magistrate's order read as follows:

> **Adalah Dengan Ini Diperintahkan** bahawa permohonan untuk waran geledah dibenarkan dengan syarat apa-apa padi, beras, bekas, bungkusan, vessel, buku atau dokumen atau artikel lain hendaklah disita ditempat dimana ianya dijumpai tanpa membawanya keluar dari tempat tersebut dan segala kos yang disebabkan oleh penyitaan tersebut adalah ditanggung oleh pihak Responden.

[11] According to DW2 they applied for the warrant because there was reasonable suspicion that an offence under the 1994 Act had been committed in respect of the subject rice. Specifically the 1st defendant suspected that the plaintiff was in unlawful possession of rice, which is an offence under s. 20 of the 1994 Act which reads:

> 20. A person in possession or control of any padi or rice in such circumstances as to raise a reasonable suspicion that an offence under this Act or any regulation made thereunder has been or is intended to be committed by him in relation to the padi or rice, shall be guilty of an offence under this Act unless he satisfies the Court that the offence has not been and was not intended to be committed by him.

[12] The basis of the 1st defendant's suspicion is that the plaintiff failed to produce any valid document for possessing the subject rice. I have given careful consideration to the evidence on this point and I find no basis for the plaintiff's allegation that the 1st defendant had wrongfully or negligently applied for the warrant of search and seizure. Even without the warrant the 1st defendant was empowered to seize the subject rice by virtue of s. 13(4) of the 1994 Act which provides:

> (4) All padi and rice in respect of which there has been, or there is reasonable cause to suspect that there has been committed an offence against this Act or any regulation made thereunder, or of any restriction or condition subject to or upon which a licence or permit has been granted, together with any receptacle, package, conveyance, vessel or other article, in which the same may have been found or which have been used in connection with the offence or breach, and any book or document which may reasonably be believed to have a bearing on the case, may be seized by the authorised officer or police officer in any place either on land or in territorial waters.

[13] In any event the 1st defendant cannot be held liable for executing a valid warrant of arrest regularly issued by the magistrate pursuant to s. 13(1) of the 1994 Act. This provision provides:

> (1) In every case where information is given on oath to a Magistrate that there is reasonable cause for suspecting that there is in any land, house, building or other place any padi, rice, receptacle, package, conveyance, vessel, book or document or other article which has been used to commit or is intended to be used to commit an offence under this Act or any regulation made thereunder, he shall issue a warrant under his hand by virtue of which an authorized officer or police officer named or referred to in the

warrant may enter the land, house or building at any reasonable time by day or night, and search or seize or seal any such padi, rice, receptacle, package, conveyance, vessel, book or document or other article.

[14] Learned counsel for the plaintiff suggested that the magistrate should have given the plaintiff the right to be heard before issuing the warrant of search and seizure. I do not think there is such requirement, nor is such requirement expedient having regard to the circumstances under which the 1st defendant was required to act. The authorities must act swiftly if they were to ensure that horses do not bolt out of the stable doors before they arrive. That is why subsection 13(2) of the 1994 Act allows an authorized officer to enter the building without warrant because delay may cause the subject matter to be removed. To accord the suspected offender a right to be heard would be to facilitate removal or even destruction of evidence. That will defeat the purpose behind s. 13(2) of the 1994 Act. The only requirements for seizure under s. 13(4) of the 1994 Act are those mentioned in the provision itself. Right of hearing is not one of them.

[15] The RMC's permission to allow for transshipment of the subject rice is contained in para. 2 of their letter dated 28 February 2006 which states:

Sukacita dimaklumkan permohonan tuan untuk menjalankan aktiviti eksport semula (transshipment) di pelabuhan Tawau adalah diluluskan tertakluk kepada syarat-syarat di Lampiran A.

[16] Does this make the defendants' act of seizing the subject rice unlawful? In my view it cannot be. It is the 1st defendant's duty to enforce the 1994 Act. So long as the 1st defendant had acted within the parameters of the 1994 Act and had not acted in bad faith, the defendants cannot be faulted and be held liable for any loss arising from the seizure. The fact that the MOF and the RMC had given the plaintiff the green light to transship rice does not exempt the plaintiff from complying with all requirements under the 1994 Act.

[17] It is axiomatic that statutory provisions must prevail over administrative sanctions. Thus whatever administrative sanctions that the plaintiff obtained from the MOF or the RMC cannot override the provisions of the 1994 Act because in matters relating to rice the applicable law is the 1994 Act. When it comes to rice

A the 1st defendant is the authority and not any other government agency or authority and that includes the RMC. The 1994 Act is a special law specially enacted to regulate dealings in rice. Therefore it must prevail over all other statutes on matters concerning rice.

B **[18]** The 1994 Act clearly requires the plaintiff to possess a licence to import rice into Malaysia. The plaintiff must therefore possess such licence before bringing the subject rice into Malaysia for whatever purpose. Otherwise it runs the risk of breaching the 1994 Act. The RMC is not the authority to decide whether an import C licence is required when rice is brought into Malaysia for the purpose of transshipment. The evidence of the Customs witnesses that the subject rice was sanctioned for transshipment must be considered in its proper context. The sanction merely permits transshipment. It does not sanction importation without licence. D Further, the RMC's permission must be subject to reg. 3, which requires for an import licence.

[19] On the evidence there can be no doubt that the subject rice was imported into Malaysia by the plaintiff. The 1994 Act does not define the words "import" and "export" but recourse may be had to E s. 66 of the Interpretation Acts 1948 and 1967 which defines "import" to mean:

> to bring or cause to be brought into the Federation or any part thereof by land, sea or air.

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[20] "Export" on the other hand is defined to mean:

> to take or cause to be taken out of the Federation or any part thereof by land, sea or air.

G **[21]** There is no provision in the 1994 Act or the regulations made thereunder which allows importation without licence for transshipment of rice. I cannot therefore accede to the plaintiff's argument that no import licence is required for the purported transshipment of the subject rice. In any event there is no clear H evidence that the subject rice was actually meant for transshipment to Indonesia and the Philippines. The undisputed evidence merely shows that the plaintiff had obtained permission from the MOF and the RMC to transship rice. The bills of lading produced by the plaintiff are not conclusive proof that the subject rice was meant for I transshipment. I am inclined to believe that the transshipment issue is a red herring and a pretext to import rice without licence.

[22] Lest the issue be blurred by argument on the existence of the sanction issued by the MOF and the RMC, it must be remembered that the subject rice was stored by the plaintiff in the bonded warehouse at Tawau Port. They were not found in any vessel where one would expect them to be if indeed they were meant for transshipment to a third country. There is also no evidence that the plaintiff had obtained permission from the 1st defendant to store the subject rice at the Tawau Port bonded warehouse. It does not matter that the subject rice did not go out of the bonded warehouse or that they were not being sold within Malaysia. The fact remains that they were imported into Malaysia without any licence issued by the 1st defendant.

[23] The plaintiff's witness (PW1) relied heavily on the RMC's permission as a justification to store the subject rice at the bonded warehouse. He was asked in cross-examination whether the plaintiff had any licence to store large quantities of rice and his answer was:

> Yes, the plaintiff company have a licence from the Royal Custom Sabah allowing the plaintiff company to store any amount of the rice at the bonded warehouse at Sabah Port Authority Tawau.

[24] It is obvious that PW1 treated the RMC's permission as a *carte blanche* to import rice without licence. This belief is unjustified and unreasonable. As an importer and exporter, albeit involving sundry goods as claimed by PW1, the plaintiff cannot claim ignorance of the requirement for an import licence to bring rice into Malaysia. In any event ignorance of the law is no excuse.

Conclusion

[25] For the above reasons it is clear to me that the plaintiff has failed to prove on the balance of probability that the defendants are liable for the losses it suffered arising from the seizure and subsequent sale of the subject rice. It is my finding that the 1st defendant had acted within the confines of the law and had not acted in bad faith. In the circumstances the plaintiff's claim was dismissed with costs.